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5 **UNITED STATES DISTRICT COURT**
6 **DISTRICT OF NEVADA**

7
8 IN RE J&J INVESTMENT
9 LITIGATION

Case No. 2:22-cv-00529-GMN-NJK

Order

[Docket Nos. 147, 148, 165]

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11 Pending before the Court is Plaintiffs' motion to compel discovery. Docket No. 148; *see*
12 *also* Docket No. 147 (sealed version of motion and exhibits). Defendant Wells Fargo filed a
13 response in opposition. Docket No. 156; *see also* Docket No. 158 (sealed version of response and
14 exhibits). Plaintiffs filed a reply. Docket No. 161; *see also* Docket No. 163 (sealed version of
15 reply and exhibit). Wells Fargo filed a motion to supplement. Docket No. 165; *see also* Docket
16 No. 167 (sealed version of motion and exhibit). Plaintiffs filed a response in opposition. Docket
17 No. 168. The Court will not hold a hearing. *See* Local Rule 78-1.

18 The discovery process is meant to proceed "largely unsupervised by the district court."
19 *Sali v. Corona Reg'l Med. Ctr.*, 884 F.3d 1218, 1219 (9th Cir. 2018). Counsel must strive to be
20 cooperative, practical, and sensible during this process, and should seek judicial intervention "only
21 in extraordinary situations that implicate truly significant interests." *Cardoza v. Bloomin' Brands,*
22 *Inc.*, 141 F. Supp. 3d 1137, 1145 (D. Nev. 2015) (quoting *in re Convergent Techs. Securities Litig.*,
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1 108 F.R.D. 328, 331 (N.D. Cal. 1985)).¹ Discovery motions will not be considered “unless the
 2 movant (1) has made a good faith effort to meet and confer . . . before filing the motion, and (2)
 3 includes a declaration setting forth the details and results of the meet-and-confer conference about
 4 each disputed discovery request.” Local Rule 26-7(c).

5 Judges in this District have held that the rules require that the movant must “personally
 6 engage in two-way communication with the nonresponding party to meaningfully discuss each
 7 contested discovery dispute in a genuine effort to avoid judicial intervention.” *ShuffleMaster, Inc.*
 8 *v. Progressive Games, Inc.*, 170 F.R.D. 166, 171 (D. Nev. 1996). The consultation obligation
 9 “promote[s] a frank exchange between counsel to resolve issues by agreement or to at least narrow
 10 and focus the matters in controversy before judicial resolution is sought.” *Nevada Power Co. v.*
 11 *Monsanto Co.*, 151 F.R.D. 118, 120 (D. Nev. 1993). To meet this obligation, parties must “treat
 12 the informal negotiation process as a substitute for, and not simply a formalistic prerequisite to,
 13 judicial resolution of discovery disputes.” *Id.* This is done when the parties “present to each other
 14 the merits of their respective positions with the same candor, specificity, and support during the
 15 informal negotiations as during the briefing of discovery motions.” *Id.* To ensure that parties
 16 comply with these requirements, movants must file certifications that “accurately and specifically

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 18 ¹ The 2015 amendments to the Federal Rules of Civil Procedure served to heighten these
 duties of counsel:

19 While the 2015 amendments to the Federal Rules of Civil Procedure
 20 may not have been front-page news, they are designed to spur
 21 significant change in the practice of law in federal court. *Cf.* Tracy
 22 Chapman, *Talkin’ Bout A Revolution* (Elektra/Asylum Records
 23 1988) (“Don’t you know/They’re talkin’ about a revolution/ It
 24 sounds like a whisper”). Chief Justice Roberts explained that these
 25 rule changes are “a big deal” even though they may not seem so at
 26 first glance, particularly since they impose on lawyers representing
 27 adverse parties “an affirmative duty to work together” in a
 cooperative manner. John Roberts, 2015 Year-End Report on the
 Federal Judiciary at 5-6 (Dec. 31, 2015) (available at
[http://www.supremecourt.gov/publicinfo/year-end/2015year-](http://www.supremecourt.gov/publicinfo/year-end/2015year-endreport.pdf)
[endreport.pdf](http://www.supremecourt.gov/publicinfo/year-end/2015year-endreport.pdf)). Chief Justice Roberts further explained that these
 amendments “are a major stride toward a better federal court
 system,” but warned that this advancement can be realized “only if
 the entire legal community, including the bench, bar, and legal
 academy, step up to the challenge of making real change.” *Id.* at 9.

28 *PlayUp, Inc. v. Mintas*, 2022 WL 17742426, at *1 (D. Nev. Dec. 8, 2022).

1 convey to the court who, where, how, and when the respective parties attempted to personally
2 resolve the discovery dispute.” *ShuffleMaster*, 170 F.R.D. at 170.²

3 “These are not simply the sentiments of an idealistic and frustrated magistrate [judge].
4 They are the law.” *Convergent Technologies*, 108 F.R.D. at 331. The “meet-and-confer
5 requirements are very important and the Court takes them very seriously.” *V5 Techs. v. Switch*,
6 *Ltd.*, 334 F.R.D. 297, 302 (D. Nev. 2019). Courts may look beyond the certification made to
7 determine whether a sufficient meet-and-confer actually took place. *Cardoza*, 141 F. Supp. 3d at
8 1145. Presenting the Court with many discovery disputes is itself a “red flag” that sufficiently
9 meaningful and sincere conferral efforts did not occur. *E.g., Reno v. W. Cab Co.*, 2019 WL
10 8061214, at *2 (D. Nev. Sept. 23, 2019) (citing *King Tuna, Inc. v. Luen Thai Fishing Ventures*,
11 *Ltd.*, 2010 WL 11515316, at *1 (C.D. Cal. Apr. 28, 2010)).

12 The Court is not persuaded that sufficiently cooperative, sincere, and meaningful conferral
13 efforts took place with respect to this motion to compel. As a starting point, the motion raises red
14 flags by presenting ten different discovery disputes.³ Moreover, a review of the record exposes
15 serious deficiencies in the conferral process, as exemplified by the dispute as to interrogatory
16 verification. It appears that the parties may have addressed verification of Wells Fargo’s
17 interrogatory responses during conferral discussions on August 9 and 12, 2024, though details of
18 that discussion are not provided. *See* Docket No. 148-1 at 17. The parties then had the following
19 exchange:

- 20 • On August 21, 2024, the Receiver stated: “Please confirm that Wells Fargo will
21 immediately serve verified answers. It is unclear at this point why Wells Fargo has not
22 done so.” Docket No. 147-6 at 4.
- 23 • On August 28, 2024, Wells Fargo stated: “We do not believe that the information
24 provided in Wells Fargo’s Responses and Objections to the Receiver’s First Set of
25 Interrogatories require a verification, and as such, none has been provided. To the

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27 ² These requirements are now largely codified in the Court’s local rules. *See* Local Rule
26-7(c), Local Rule IA 1-3(f).

28 ³ These ten disputes are in addition to the other discovery disputes briefed elsewhere.

1 extent our responses are amended such that they would warrant verification, one would
2 be provided.” Docket No. 148-3 at 54.

- 3 • On September 12, 2024, the Receiver stated: “Wells Fargo’s position per your August
4 28 letter is that it need not verify its answers. The Parties are at impasse.” Docket No.
5 148-3 at 67.
- 6 • On September 18, 2024, Wells Fargo stated: “Please let us know which Interrogatories
7 you contend require verification. We would like to further understand your position
8 before completing the meet and confer.” Docket No. 148-3 at 72.
- 9 • On September 20, 2024, the Receiver stated: “We disagree with the premise of your
10 question. Wells Fargo was obligated to serve its answers under oath. ‘[W]hich
11 Interrogatories . . . require verification’ is not an appropriate topic of conferral, so we
12 decline the invitation to negotiate around Wells Fargo’s failure to comply with one of
13 the most basic requirements of Rule 33.” Docket No. 148-3 at 76.

14 In short, the meet and confer efforts consist of stating that the basis for Wells Fargo’s position is
15 “unclear,” followed by *ipse dixit* by both sides that they are right or that the opposing view is
16 unsupported, and statements by the Receiver that the parties are at an “impasse” and that he refuses
17 to discuss further.

18 Any attorney familiar with the conferral requirements should know that this is absolutely
19 not the good faith meet-and-confer that is required.⁴ To repeat, settled legal precedent makes clear
20 that a sufficient conferral process requires much more:

21 Inherent in [the local rule’s] language, and essential to the Rule’s
22 proper operation, is the requirement that parties treat the informal
23 negotiation process as a substitute for, and not simply a formalistic
24 prerequisite to, judicial resolution of discovery disputes. To that
25 end, the parties must present to each other the merits of their
26 respective positions with the same candor, specificity, and support
27 during informal negotiations as during the briefing of discovery
28 motions. Only after all the cards have been laid on the table, and a
party has meaningfully assessed the relative strengths and
weaknesses of its position in light of all available information, can
there be a “sincere effort” to resolve the matter.

⁴ The Court is also unpersuaded that Wells Fargo asking for clarification from the Receiver was actually bad-faith obstruction of the conferral process. *See* Docket No. 163 at 14.

1 *Nevada Power*, 151 F.R.D. at 120 (internal citations and parenthetical omitted). While the
2 language of the local rules may have been tweaked in some ways, Judge Leavitt's sentiments
3 continue to apply with equal force today.

4 Accordingly, the motion to compel (Docket No. 148) is **DENIED** without prejudice. Any
5 renewed motion to compel may only be filed after the parties engage in further conferral efforts
6 that satisfy the governing requirements.⁵ In addition to the certification already required by Local
7 Rule IA 1-3(f)(2) and Local Rule 26-6(c), any future discovery motion practice filed in this case
8 must also include a certification that the filing attorney has read in their entirety the following
9 cases: *Cardoza v. Bloomin' Brands, Inc.*, 141 F. Supp. 3d 1137 (D. Nev. 2015); *ShuffleMaster,*
10 *Inc. v. Progressive Games, Inc.*, 170 F.R.D. 166 (D. Nev. 1996); and *Nevada Power Co. v.*
11 *Monsanto Co.*, 151 F.R.D. 118 (D. Nev. 1993). Any renewed motion to compel must be filed by
12 April 1, 2025. Any renewed discovery motion practice will, of course, be subject to the
13 presumption of an award of expenses against the loser. *See* Fed. R. Civ. P. 37(a)(5)(A), (B).

14 Defendant's motion to supplement (Docket No. 165) is **DENIED** as moot.

15 The parties filed hundreds of pages of documents under seal in relation to this motion
16 practice. Because the Court is not resolving this motion practice on its merits, the Court will
17 **STRIKE** the materials filed under seal. Docket Nos. 147 (and the exhibits thereto), 148-2, 158
18 (and the exhibits thereto), 163 (and the exhibit thereto), 167 (and the exhibit thereto). Any renewed
19 requests for secrecy must be mindful of the governing standards.

20 IT IS SO ORDERED.

21 Dated: March 11, 2025

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Nancy J. Koppe
United States Magistrate Judge

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28 ⁵ To be perfectly clear, the conferral efforts must be renewed as to all of the items in dispute,
even though the order focuses mostly on the verification dispute.